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No.....

Supreme Court, U.S.
FILED
JUL 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

FIRST NATIONAL BANK OF OMAHA,
A Nebraska Banking Corporation,
Respondent.

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,
Petitioners,

vs.

NEBRASKA STATE BAR ASSOCIATION,
KAY ORR, GOVERNOR,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

GARY R. HAGEBUSH
ROY E. SCHWASINGER
Pro se
6904 Oak Plaza Apt. H 1
Omaha, Nebraska 68106
(402) 393-7232

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTIONS PRESENTED

1. Under Federal question jurisdiction, what court, federal or state district court, has jurisdiction over First National Bank of Omaha, alleged by counsel in the Douglas County District Court as being a Nebraska Banking Corporation and received judgment as such without complying with Nebraska Revised Statutes Sec. 8-101(4) and 8-114?

2. Are judges required to enforce both state and federal laws passed by Congress and signed by the President or passed by state legislatures and signed by the governors under Article VI (2) of the United States Constitution who by Oath alleged to do?

3. Funds were misapplied to an account not authorized to receive payment from Water Conservation Systems Co.; who is responsible for the damages?

4. A service charge was made for a wire transfer that did not take place. Is the First National Bank of Omaha responsible for the damages sustained for failure to carry out contract obligation?

5. The Governor of the State of Nebraska and the Nebraska State Bar Association alleged that the Lancaster County District Court lacked jurisdiction over them, however through counsel no evidence was submitted to the court to sustain their objection under 28 U.S.C. 1332. Does this constitute misrepresentation, fraud or negligence?

6. Can an affidavit in which a portion is crossed out still be a viable legal document?

7. Can a Plaintiff through misrepresentation obtain judgment?

8. Is the Plaintiff or counsel responsible for misrepresentation of affidavits in the courts?

9. Is the Governor of the State of Nebraska, as the chief Executive Officer, responsible for the misconduct of attorneys licensed by the state to practice law?

10. Was the Constitutional rights of Water Conservation Systems Co., Gary R. Hagebush and Roy E. Schwasinger violated by the courts for failure to order the production of records to disclose Plaintiff identity?

PARTIES INVOLVED

All Parties to the proceedings are included in the style of the case.

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No.....

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In The

Supreme Court of the United States

October Term, 1987

—o—

Water Conservation Systems Co.,
Gary R. Hagebush,
Roy E. Schwasinger,

Petitioners,

v.

First National Bank of Omaha,
A Nebraska Banking Corporation,

Nebraska State Bar Association,

Kay Orr, Governor,

Respondents.

—o—

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

—o—

Petitioners, Water Conservation Systems Co, Gary R. Hagebush and Roy E. Schwasinger, prays that a Writ of Certiorari issue to review the Judgment and Opinions of

the Supreme Court of Nebraska entered on June 19, 1987, and its denial of timely Motions for vacating Judgment and granting Judgment including a Motion for determination filed on the 11th day of June, 1987.

———o———

OPINIONS BELOW

The opinions of the Supreme Court of Nebraska have been reported; a true and correct copy of the opinions is set out at App. 1, 2, 3 hereto. Attached is a true and correct copy of the opinion of The Eighth Circuit Court of Appeals. See App. 4.

———o———

STATEMENT OF JURISDICTION

Jurisdiction of Supreme Court is granted under United States Constitution Article III Section 1 and 2, Section 1251 et seq. of Title 28.

This Writ of Certiorari is granted under Title 28 U.S.C. 2104.

Petitioners are filing Petition for Writ of Certiorari under U.S. Sup. Ct. Rule 46 .3 28 U.S.C..

Petitioners are filing Petition for Writ of Certiorari under Title 28 U.S.C. 2101 (b) and 2103.

Petitioners are complying with U.S. Sup. Ct. Rule 10 .3 and .6 from opinions filed in the Supreme Court of Nebraska on June 19, 1987.

Petitioners are filing a Writ of Certiorari for the determination of Federal Question Jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND ACTS INVOLVED

This case involves the First Article to the United States Constitution, Section 8 provides:

The Congress shall have the power

3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

The Third Article to the United States Constitution, which provides in relevant Part: Section 1.

The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, etc.

Section 2.

, and between a State, or the citizens thereof,

The Fourth Article to the United States Constitution, which provides in relevant part: Section 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several States.

The Sixth Article to the United States Constitution, which provides in relevant part;

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Eleventh Amendment to the United States Constitution which provides;

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Short Title of 1978 Amendment. Section 901 of Pub. L. 90-630. Title XX 2001, Nov. 10, 1978, 92 Stat. 3728, provided that: "This title (which enacted subchapter VI of this chapter) may be cited as the "Electronic Fund Transfer Act".

This case involves the Federal Tort Claims Act.

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STATEMENT OF THE CASE

A Petition for Writ of Certiorari is requested by petitioners from opinions of the Nebraska Supreme Court involving Gary R. Hagebush, Roy E. Schwasinger and their company, Water Conservation Systems Co. filed in the Nebraska Supreme Court on the 19th day of June, 1987, as set forth by the statement of the case.

First National Bank of Omaha alleged to be in compliance with Nebraska Revised Statute Sec. 8-101 (4) and

8-114, and used the Douglas County District Court to obtain judgment, alleging that Gary R. Hagebush and Roy E. Schwasinger, through their company had borrowed money from the bank as a state chartered financial institution, however the bank through its counsel never produced the letter of termination required for the bank to become a state chartered bank pursuant to 12 U.S.C. Sec. 30 & 31. The bank alleged that Gary R. Hagebush and Roy E. Schwasinger were liable for the funds rather than Water Conservation Systems Co.. A Motion was made to dismiss the suit through their counsel. The Court had errored in accepting the case as no record of such a corporation can be found in the Office of the Secretary of State, the Nebraska State Department of Banking alleged lack of jurisdiction, and the Office of the Comptroller of the Currency alleged that the bank was a national banking association. Banks are required to be incorporated in order to do business in the state before any deposit can be made. The motion to dismiss was overruled by the judge and counsel for the defendants failed to report misconduct of the judge and attorneys as set forth in Nebraska Revised Statute Sec. 7-102 and 7-106 involving the judge and the attorneys of record.

Funds from the proceeds of the loan were to have been wire transfered to Dyckes Sprinkler Co. Ltd. account in the Bank of Montreal located in Saskatoon, Saskatchewan, Canada. No wire transfer was ever made, however a charge for the service was made and paid, a violation of the Electronic Fund Transfer Act. Merchandise has been stored since 1983 by petitioners since the payment was to have been made to Dyckes Sprinkler Co. Ltd. but was placed into the account of Dyckes Plastic Group. Payment by bank was alleged to have been made by check and

bank through counsel alleged that G. J. Dyck had sold the assets to Dyckes Plastic Group which caused the infringment of the patents as set forth under 35 U.S.C. and the warranty of the product was worthless. The Canadian Patent Office in answer to a trade complaint confirmed the ownership of the patents, etc. to be owned by Dyckes Sprinkler Co. Ltd. and the name was changed to Gerhard Holdings Ltd., the sole owner being G. J. Dyck. No record of any agreement for the sell of assets can be located in Canada and the counsel for bank has failed to supply a copy alleged by them in court to have occured including the alleged ownership of stock in Dyckes Plastic Group by G. J. Dyck which they later rescinded by alleging crossing it out. Bank and Counsel interferred with the contractual rights of petitioners since petitioners had purchased the assets from Mr. Herbert M. L. Robertson, through the purchase of one share of stock in March, 1983. Dyckes Plastic Group exspired as a business in July, 1983, after Water Conservation Systems had made the purchase.

Judge James Buckley did grant counterclaim for negligent wire transfer and later Judge Paul Hickman stated that the bank could be sued for paying an account not authorized to receive payment, however no corporation by the name of First National Bank of Omaha, A Nebraska Banking Corporation can be located and no determination by the trial courts has been made as to the identification of the alleged bank even though petitioners through motion tried to obtain the records of the bank without success.

Water Conservation Systems Co. brought suit under Nebraska Revised Statute Sec. 26 by Writ of Mandamus to have the Governor and the Nebraska State Bar Associa-

tion to show cause why the bank could use state courts to obtain judgment. Writ was never answered however defendants demurred alleging courts lack of jurisdiction, however no documents were placed in the Lancaster County District Court showing diversity of Citizenship under 28 U.S.C. 1332, and both have alleged to be residing in Lancaster County. Case was filed in the Lancaster County District Court, Lincoln, Nebraska. Damages were sought for allowing attorneys to misrepresent their clients in courts, allowing bank to operate in state not in compliance with the Nebraska Bank Act, as alleged to have been, and for the Governor to close the bank as set forth under Nebraska Revised Statute Sec. 8-114, and pay damages sustained by petitioners for interference with contractual rights, misrepresentation by attorneys licensed by the State of Nebraska. It is from these dismissals from the Nebraska Supreme Court this action is appealed from.

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STATEMENT OF FACTS

First National Bank of Omaha as a Nebraska Banking Corporation alleged in the Douglas County District Court, Omaha, Nebraska, through its counsel, that it was in compliance with the Nebraska Banking Act as a state chartered financial institution, being duly organized and existing by virtue of the banking laws of the State of Nebraska. The above statement would place them under Nebraska Revised Statute Sec. 8-101 (4) and 8-114. No record of such a corporation can be located in the Office of the Secretary of State and the Nebraska Department of Banking claims no jurisdiction over it. See App. 7 & 8. Bank alleged to

have loaned money as such and obtained judgment. Bank alleged through counsel that money was loaned to Water Conservation Systems Co. owned by Gary R. Hagebush and Roy E. Schwasinger, to purchase merchandise from Dyckes Sprinkler Co. Ltd. of Saskatoon, Saskatchewan, Canada.

On or about December 21, 1982, on the same day the note was made and proceeds of note were placed into the new account of Water Conservation Systems Co., the Bank was to have wire transferred the sum of $2,437.04 to Dyckes Sprinkler Co. Ltd. in care of Blair Conley at the Bank of Montreal. No wire transfer was ever made, however a charge was made and and the service was paid for. By failing to wire transfer the funds as demanded, the bank, had interferred with the agreement made between Continental Manufacturing and Sales Inc. alleged to have purchased assets from G. J. Dyck owner of Dyckes Sprinkler Co. Ltd., and Gary R. Hagebush and Roy E. Schwasinger. Bank later alleged through counsel that payment by check was made to Dyckes Plastic Group, alleged to have purchased assets in the summer of 1979, however Dyckes Plastic Group expired as a business on July 16, 1983. Bank also alleged that G. J. Dyck had interest through the ownership of stock in Dyckes Plastic Group but later alleged to have crossed that statement in the affidavit out on that claim. No official documents were ever placed into any court, federal or state, showing any agreement to have been in existence at any time. A trade complaint was filed through the International Trade Administration to locate the ownership of products including United States and Canadian Patents as set forth under Article 1 section 8 of the United States Constitution grant-

ing congress authority. See App. 9. The Canadian Patent Office by answer to complaint, stated that all patents were owned by Dyckes Sprinkler Co. Ltd. but the name had been changed to Gerhard Holdings Ltd. in December, 1979, owned by G. J. Dyck.

On or about September 9, 1983, the Douglas County Sheriff's Office delivered to Gary R. Hagebush and Roy E. Schwasinger a summons alleging that First National Bank of Omaha, A Nebraska Banking Corporation had filed suit on two notes alleged by that corporation to have loaned Water Conservation Systems Co. money but the suit was against Gary R. Hagebush and Roy E. Schwasinger. Defendants through Counsel, placed a motion into the Douglas County District Court to have the case dismissed. The Clerk of the Douglas County District Court and the Douglas County Sheriffs Office through negligence served summons upon defendants in which no corporation could be found as to the plaintiff. A National Bank cannot be and at the same time be a state chartered financial institution and be in compliance with 28 U.S.C. 30. The Clerk of the Douglas County District Court and Sheriff could have telephoned the Secretary of State and/or the Nebraska State Banking Department for confirmation of the legal existance of the plaintiff and should have notified the Nebraska State Bar Association that attorneys of law licensed by the State of Nebraska were filing fraudulent documents into the court and the Governor should have been notified of a bank operating as a state chartered financial institution in the Douglas County District Court without complying with Nebraska Revised Statute Sec. 8-101 (4) and 8-114. The Governor should have ordered the bank closed. The Nebraska State Bar Association

should have disciplined the attorneys through disbarment, however nothing was done. Douglas County District Court Judge James Buckley as a licensed attorney should have been aware of the misrepresentation of the bank by their counsel to the Court and should have dismissed the case and notified the Nebraska State Bar Association of the misconduct of licensed attorneys. Judge Buckley granted judgment and through the Douglas County Sheriff's Office removed Gary R. Hagebush from his residence which violated Gary R. Hagebushes rights granted under the Fourteenth Amendment to the Constitution. Judge James Buckley did make an entry into the Trial Docket dated June 26, 1984, "Ordered, that counterclaim be and the same is hereby dismissed without prejudice." See App. 11 however, no corporation can be located in the State of Nebraska. The Comptroller of the Currency alleges that the bank is a national banking association. See App. 12. A complaint was filed with the Federal Bureau of Investigation and the U.S. House of Representatives, Committee on Banking, Finance and Urban Affairs, the United States Attorneys Office failed to take legal action against bank, attorneys and judges as a licensed attorney, and licensed by the State of Nebraska. See App. 13 & 14. A demand for payment of damages was made by Defendants Counsel, but counsel for bank alleged no damages existed. See App. 15.

The Nebraska Supreme Court and the United States District Court would not take jurisdiction. The United States Eighth Circuit Court of Appeals alleged lack of jurisdiction and all have attorneys licensed by the State of Nebraska and should have reported misconduct by attorneys to the Nebraska State Bar Association which by Oath they alleged to do which is a violation of their oath and Articles III and VI of the United States Constitution.

State Courts have jurisdiction of national banking association. (Walker v. Bank of America Nat. Trust & Sav. Ass'n) Federal Courts cannot reverse or modify a state court judgment (Hana v. Home Ins. Co.) however the Nebraska Supreme Court alleged lack of jurisdiction of case but failed to vacate judgment under Nebraska Revised Statute Sec. 25-2001, and errored in not sending the case back to the Douglas County District Court in support of a motion for the production of records to determine plaintiff and force the production of the records alleged by counsel of bank to be in existence which state and federal agencies alleged did not exist, including the Government of Canada which has a trade agreement with the United States.

The Attorney General for the State of Nebraska should have prosecuted for violations of state laws and under 18 U.S.C. 656. The Governor should have ordered the bank closed for failure to comply with state law as a state chartered financial institution. The Comptroller of Currency failed to take action against the bank if it is a national banking association for false entry in bank records, and this should have been noticed by national bank examiner upon examination of the bank and that 28 U.S.C. 2403 (a) may be applicable and this writ should be served upon the Solicitor General, Department of Justice, Washington, D.C. 20530 due to the finding of courts that National bank is a national agency subject only to control of Congress. Schmitt v. Tobin (1935, D.C. Nev.) 15 F. Supp. 35, however the Douglas County District Court converted the bank by judgment and Nebraska Supreme Court has upheld the Judgment as a Nebraska Banking Corporation.

This Court should determine if the constitutional rights for due process granted under the Constitution, vio-

lated Petitioners right granted under Article III Section 2 or under Amendments under Article XI, however Petitioners have filed for claims under the Federal Tort Claim Act and were denied and under the Nebraska Administrative Claims, all claims were denied. Michael J. O'Keefe, District Counsel, Midwestern District, Comptroller of the Currency, by letter addressed questions raised, however no mention of a termination of the national bank charter has ever been placed into the courts. See App. 16.

A Writ of Mandamus was issued by the Lancaster County District Court, Lincoln, Nebraska, to have the Governor and the Nebraska State Bar Association, which is a non-profit corporation as filed in the Lancaster County Clerks Office, to show cause why the bank could use state courts without complying with state laws in obtaining judgment. No answer to the writ was made. Judge Robert Camp dismissed the case even though he was a defendant in the case by being a member of the Nebraska State Bar Association which is a conflict of interest. The case was appealed to the Nebraska Supreme Court after defendants demurred on alleged grounds that the Lancaster County District Court lacked jurisdiction over them but never offered any evidence of the fact that their principle place of business and residency was not in Lancaster County and would have been under diversity of citizenship jurisdiction. Judge Robert Camp failed to follow Nebraska Revised Statute Sec. 26, which is a violation of his Oath to enforce the laws of the State of Nebraska. A Motion was made for the Nebraska Supreme Court to determine if members of the bar could hear the case, be a defendant in the case and be counsel for the defendants. Court dismissed case without writing an opinion and dismissed the appeal to vacate

judgment and grant judgment as frivolous. These two dismissals covering the same facts are now placed before this court by Writ of Certiorari to determine jurisdiction, damages, and to vacate judgment should this court determine that the corporation that brought suit was non-existant, and a false suit had been brought against Petitioners in a state court by attorneys of law that by Oath placed fraudulent documents in the courts alleging to have a client by that name, and to determine damages suffered by Petitioners for loss of income, business, contracts, false suit, misrepresentation, mismanagement, fraud, deceit, interference with contractual rights, and failure of the courts to have the accuser identified, and having assets alleged to have been secured by a note of Bank on which no signatures were made.

The Governor by Oath alleged to have been a resident of the State when elected and by Oath alleged to enforce the laws of the State of Nebraska, however the Governor did admit to the Lancaster County District Court that she was not a resident of the state but offered no evidence as to the legal residence and should be ordered removed from office by this court for perjury or for false oath alleging when she was sworn in and became Governor she would enforce the laws of the state and uphold the Constitution of the United States.

Should this Court fail to grant Writ, Petitioners are under the opinion that the bank was properly converted to become a state chartered financial institution as stated by opinion of the Nebraska Supreme Court, and that the Comptroller of the Currency no longer has jurisdiction over said bank as a national bank and the governor of the state under Nebraska Revised Statute Sec. 8-114 is re-

quired to close bank and that national banking associations no longer need to comply with state law and that this court has approved interstate banking by lack of jurisdiction contrary to Acts of Congress.

The Nebraska Supreme Court failed to adhere to its own rulings: Foreman v. State; State v. Carrico; Woodman of the World Life Ins. Soc. v. Peter Kiewit Son's Co.; State v. Hart; Buildings Systems, Inc., v. Medical Center, Ltd.; State v. Hall. Nebraska Supreme Court errored against its own decisions and judgment should have been vacated. Nebraska Revised Statute Sec. 25-2001 gave the Supreme Court the power to reverse or modify the decision.

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REASONS FOR GRANTING WRIT

The present case raises issues as to which the Federal Constitution and decisions of this Court are controlling and which the Supreme Court of Nebraska has failed to follow. National Banking Association are deemed citizens of the state in which they are located, however attorneys for the bank alleged to the Nebraska Supreme Court that the Bank was out of the jurisdiction of that court contrary to state law and has operated as a state chartered financial institution to obtain judgment. The Nebraska State Bar Association has allowed attorneys to place into the courts allegations which they are unable to document as being factual and truthful. The governor of the State of Nebraska has allowed bank to operate in the courts of the State of Nebraska alleging to be operating by virtue of the Laws of the State of Nebraska when in fact the bank is

not incorporated, registered, chartered, licensed or complying with no state laws, and has failed to order the bank closed. Governor Kay Orr and the Nebraska State Bar Association has gone so far in the Court as to state that the court has no jurisdiction over them, however no documents have been entered into the court to provide any evidence to the contrary and have allowed a bank to operate in the State in violation of Nebraska Revised Statute Sec. 8-114. This has created interstate banking since the state alleged to have no jurisdiction over national banking association contrary to determination of this Court.

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CONCLUSION

The Petition for Writ of Certiorari should be granted and a Writ of Certiorari should issue to review opinions of the Supreme Court of Nebraska.

Respectfully Submitted,

Water Conservation Systems Co.
Gary R. Hagebush Pro Se
Roy E. Schwasinger Pro Se
6904 Oak Plaza Apt. H. 1.
Omaha, Nebraska 68106
(402) 393-7232

APPENDIX

OFFICE OF CLERK OF THE SUPREME COURT

Lincoln, NE 68509 1/23/86

IN CASE OF FIRST NATL. BANK V. HAGEBUSH, NO. 85-561 (Douglas 831-565)

The Following Orders Have Been Made:

Motion of appellee for summary dismissal sustained; see Rule 7(B)(1)*.

Respectfully, Clerk of the Supreme Court

OPINION OF THE
SUPREME COURT OF NEBRASKA

Case Title

First National Bank of Omaha, a Nebraska Banking Corporation, Appellee,

v.

Gary R. Hagebush and Roy E. Schwashinger, Appellants.

Case Caption

First Nat. Bank of Omaha v. Hagebush

Filed June 19, 1987. No. 86-1016.

Appeal from the District Court for Douglas County: Paul J. Hickman, Judge. Appeal dismissed.

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*Rule 7(B)(1)

B. Motions for Summary Dismissal or Affirmance.

(1) A motion to dismiss for lack of jurisdiction may be filed at any time after an appeal has been docketed.

Gary R. Hagebush, pro se, and Roy E. Schwasinger, pro se.

Michael A. Nelsen and Geraldine L. Clanton of Schmid, Mooney & Frederick, P.C., for appellee.

FIRST NAT. BANK OF OMAHA V. HAGEBUSH
NO. 86-1016 - filed June 19, 1987.

Krivosha, C.J., Boslaugh, White, Hastings, Caporale, Shanahan, and Grant, JJ.

PER CURIAM.

This appeal arises out of a suit brought by the plaintiff-appellee, First National Bank of Omaha, against defendants-appellants, Gary R. Hagebush and Roy E. Schwasinger, in which plaintiff secured a judgment in the district court against both of the defendants on two promissory notes. Defendants undertook an appeal of that judgment to this court, but failed to perfect the appeal steps in time. After plaintiff filed a motion for summary dismissal pursuant to Neb. Ct. R. of Prac. 7B(1) (rev. 1986), defendants voluntarily dismissed that appeal, assigning a number of legally frivolous reasons for so doing. 219 Neb. xxvii (case No. 85-156, Apr. 17, 1985).

Thereafter, defendant Hagebush filed in the district court an application to set aside the sheriff's sale and both defendants filed a motion to set aside and vacate the judgment against them. The district court overruled the application and motion, and defendants again improperly undertook an appeal to this court. We therefore sustained plaintiff's motion for summary dismissal pursuant to the provisions of rule 7B(1). 221 Neb. xxii (case No. 85-561, Jan. 23, 1986).

The present matter is before us on the recommendation of the prehearing conference officer that this purported appeal be dismissed pursuant to Neb. Ct. R. of Prac. 7A (rev. 1986), and upon the motion of the plaintiff for summary dismissal pursuant to rule 7B(1).

In this case the defendants again filed in the district court an application to set aside and vacate the judgment. The district court again overruled that application, and the defendants again undertake an appeal to this court. There exists no legally viable basis for such an appeal, and it is therefore wholly frivolous.

Accordingly, the appeal is hereby dismissed, and plaintiff is awarded the sum of $1,000 to apply toward the services of its attorneys in this court, which is taxed to the defendants as costs. *Shanks v. Johnson Abstract & Title Co., ante* p. —, — N.W.2d — (1987); *Stratman v. Hagen,* 221 Neb. 157, 376 N.W.2d 3 (1985); *Graham v. Waggener,* 219 Neb. 907, 367 N.W.2d 707 (1985); Neb. Rev. Stat. § 25-824 (Reissue 1985). All costs are taxed to the defendants.

APPEAL DISMISSED.

BEFORE THE SUPREME COURT OF NEBRASKA

Water Conservation Systems Co.,	)	No. 87-337.
	)	
Appellant,	)	
	)	ORDER.
v.	)	
	)	(Filed
Nebraska State Bar Association and Kay Orr, Governor,	)	June 19, 1987)
	)	
Appellees.	)	

This matter came on for consideration this 17th day of June 1987, upon the Court's own motion.

Our review reevals that there exists no error of law and that a detailed opinion would have no precedential value.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the district court's judgment of dismissal be, and the same hereby is, affirmed pursuant to the provisions of Neb. Ct. R. of Prac. 7A (rev. 1986).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motions of the defendants, Nebraska State Bar Association and Kay Orr, Governor, for dismissal pursuant to Neb. Ct. R. of Prac. 7B(2) (rev. 1986), and the motion filed by plaintiff on June 12, 1987, seeking a determination of whether counsel appearing for said defendants could properly appear, each be, and each hereby is, overruled as moot.

BY THE COURT

/s/ Leslie Boslaugh
Chief Justice Pro Tempore

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 85-1726

Gary R. Hagebush and Roy E. Schwasinger, Appellants, v. First National Bank of Omaha, a Nebraska Banking Corporation; United States of America; and State of Nebraska, Appellees.	)	Appeal from the United States District Court for the District of Nebraska

Submitted: August 23, 1985

Filed: September 19, 1985

Before HEANEY, Circuit Judge, BRIGHT, Senior Circuit Judge, and BOWMAN, Circuit Judge.

PER CURIAM.

We have reviewed the briefs of the parties and the record below. Finding no error of fact or law, we affirm the judgment of the District Court[1] dismissing the suit for lack of jurisdiction.

[1]The Honorable Warren K. Urbom, Chief United States District Judge for the District of Nebraska.

(Flag)

STATE OF NEBRASKA

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that

there is no record of
FIRST NATIONAL BANK OF OMAHA
filed in the office of the Secretary of State.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

(SEAL)

Done at Lincoln this Eighteenth day of July in the year of our Lord, one thousand nine hundred and eighty four.

/s/ Allen J. Beermann
Secretary of State

STATE OF NEBRASKA

Robert Kerrey . Governor . Roger M. Beverage
Director

July 18, 1984

Mr. Roy Schwasinger
8308 N. 46th Street
Omaha, Nebraska 68152

Gentlemen:

You are advised that this office has no jurisdiction over The First National Bank of Omaha. We only have authority over state chartered or licensed financial institutions.

Sincerely,

/s/ Reed M. Kohl
Assistant Director

RMK/rbp

cc: Mr. Gary Hagebush
9411 Manderson
Omaha, Nebraska 68134

STATE OF NEBRASKA

Robert Kerrey . Governor . Roger M. Beverage
Director

Hand DELIVERED

December 4, 1984

Mr. Roy E. Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

No record can be found in this office of the registration of First National Bank of Omaha, 16th and Dodge, Box 3128, Omaha, Nebraska 68103, as a licensee under the provisions of Article 8, Sections 8-816 and 8-819 of the Nebraska Banking Act.

Sincerely,

/s/ Reed M. Kohl
Assistant Director

RMK/rbp

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Unclas Ottawa 06677

From FCS

E.O. 12356: N/A
Tags: Bexp, Ca
Subject: Trade Complaint: Water Conservation Systems Co. vs. Dyckes Sprinkler Co. Ltd., et al

Ref: (A) Omaha 151; (B) Ottawa 6323

1. Mrs. Brazeau, Information Officer, Canadian Patent Office, referred to Ref (B), provided following information with respect to Canadian patents listed ref (A):

839,803—Appears to be incorrect number. Covers flame retardant cellulosic composition. Date of issue: April 21, 1970. Inventor—Robert McClure, transferred rights to Beaunit Corporation, New York City, N.Y.

946,358—Plastic valves. Date of issue—April 30, 1974.

921,518—Plastic hose, risers and clamping systems. Date of issue—February 20, 1973.

920,912—Stacked valve system. Date of issue—February 13, 1973.

883,191—Saddle-type tee connector. Date of issue—October 12, 1971.

967,135—Expansion plug valve. Date of issue—May 6, 1975.

According to patent office files, present owner of these patents, with exception of first one, is Dyckes Sprinkler Co. Ltd.

2. An abstract of title for each patent, that is, an official certificate outlining changes in title, if any, which have

taken place, available from Canadian Patent Office at a cost of Cdols 35 for each patent. If abstract of title required, request should be accompanied by cheque or money order in Canadian funds made out to Receiver General for Canada.

3. Request for similar information with respect to U.S. patents listed in reftel should be directed to U.S. Patent Office in Washington.
Niles
BT
#6677

Court Reporter Lola (illegible), Bailiff

The District Court of Nebraska
FOURTH JUDICIAL DISTRICT
COURT HOUSE
OMAHA, NEBR.

26 June 1984

Ms. Geraldine Clanton
1800 First National Center
Omaha, NE 68102

Ms. Edna R. Atkins
1823 Harney Street
Omaha, NE 68102

Re: First National Bank of Omaha v. Hagebush—831-565

On this date, I have made the following docket entry:

> "Demurrer of amended answer is overruled as to first affirmative defense, sustained as to the second, third, and fourth affirmative defenses. Second, third and fourth affirmative defenses are stricken. Demurrer to counterclaim is sustained. Ordered, that counterclaim be and the same is hereby dismissed without prejudice."

The first affirmative defense alleges a legitimate setoff. The counterclaim does not arise out of the loan transaction and, therefore, would have to be asserted as a separate action.

Very truly yours,

/s/ James A. Buckley
District Judge

JAB:g

Comptroller of the Currency
Administrator of National Banks

Midwestern District
911 Main Street, Suite 2616
Kansas City, Missouri 64105

November 13, 1984

Mr. Roy Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

Mr. Roger Hirsch of the State of Nebraska Department of Banking has asked that our Office respond to your inquiry regarding the status of The First National Bank of Omaha, Omaha, Nebraska.

The First National Bank of Omaha was chartered as a national banking association by the Comptroller of the Currency in 1863. Its status as a national bank has been uninterrupted since that time.

The First National Bank of Omaha acquired the former David City Bank, David City, Nebraska under emergency provisions effective September 6, 1984. The Comptroller approved this transaction as well as the retention of the David City location as a branch of the acquiring bank.

We hope this information sufficiently responds to your inquiry. If you should have further questions, you may contact the undersigned at (816) 374-7141.

Sincerely,

/s/ Donelle H. Ward
National Bank Examiner
Midwestern District

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON BANKING, FINANCE AND
URBAN AFFAIRS
NINETY-EIGHTH CONGRESS
2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

November 16, 1984

Mr. Roy E. Schwasinger
8308 N. 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

In response to your October 29, 1984 letter, I am transmitting a copy of a letter I recently received from the Office of the Comptroller of the Currency concerning their investigation of First National Bank of Omaha which I had initiated at your request. As soon as they have completed this investigation, I will forward their findings to you.

Sincerely,

/s/ Fernand J. St Germain
Chairman

FJStG:jOe
Enclosure

(SEAL)

U.S. Department of Justice

Federal Bureau of Investigation

Post Office Box 548
Omaha, Nebraska 68101

April 3, 1985

In Reply, Please Refer to
File No.

Mr. Roy E. Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

This is in response to the complaint which you filed with our office on March 29, 1985, regarding alleged banking irregularities on the part of the First National Bank of Omaha.

We have reviewed the materials you provided at the time you made your complaint and have discussed the matter with the United States Attorney's Office for the District of Nebraska. It is our opinion that this matter does not warrant investigation by the Federal Bureau of Investigation, but is best handled as a civil matter between yourself and the bank. Therefore, this office will be taking no action regarding your complaint.

Very truly yours,

James F. Ahearn
Special Agent in Charge

By: James G. Lovelace
Supervisory Special Agent

SCHMID, FORD, MOONEY & FREDERICK,
Attorneys At Law
1800 First National Center
Sixteenth and Dodge Streets
Omaha, Nebraska 68102

Telephone
402 341-7100

April 10, 1984

Edna R. Atkins
Attorney at Law
823 Harney Street
Suite 1002
Omaha, NE 68102

Re: First National Bank of Omaha
vs. Hagebush & Schwasinger
Doc. 831 No. 565

Dear Ms. Atkins:

This is in response to your letter of April 6, 1984, in which you requested the First National Bank of Omaha to "settle on damages caused to defendants as a result of the [alleged] misapplication". After discussing the same with my client, we wish to inform you that settlement negotiations will not be discussed with the defendants as the bank intends to pursue collection for the full amount due on the promissory notes sued upon.

Sincerely yours,

/s/ Geraldine L. Clanton

GLC/pml

cc: Steve Ritzman

Comptroller of the Currency
Administrator of National Banks

Midwestern District
911 Main Street, Suite 2616
Kansas City, Missouri 64105

December 13, 1984

Mr. Roy Schwasinger
8308 North 46th Street
Omaha, Nebraska 68152

Dear Mr. Schwasinger:

You have raised a question with Corporate Analyst Donelle Ward of this Office as to whether a national bank is required to be licensed by the Nebraska Department of Banking in order to make personal loans. This matter involves your lawsuit against The First National Bank, Omaha, Nebraska.

As a general rule, state laws which expressly conflict with federal law, unduly burden the operations of the national banks, or frustrate their operations, are preempted with respect to their application to national banks. *Davis v. Elmira Savings Bank,* 161 U.S. 275 (1896); *see also, Anderson National Bank v. Luckett,* 321 U.S. 233 (1944); *Easton v. Iowa,* 188 U.S. 220 (1903).

A "license" is in the nature of a special priviledge, entitling the licensee to do something that he would not be entitled to do otherwise. Legislation purporting to imposed license restrictions or charges against instrumentalities of the federal government has frequently been declared void. 51 Am. Jur. 2d, Licenses and Permits, §§ 1-11 (1970), and the cases cited therein. Accordingly, national banks are not required to obtain state licenses to engage in activities that they, by their federal charter, are already entitled to pursue. In addition to having the power to carry on the business of banking under 12 U.S.C. § 24(7), national banks are specifically authorized to lend money. *Steward v. Atlantic National Bank of Boston,* 27 F.2d 224 (9Th Cir. 1928).

Very truly yours,

/s/ Michael J. O'Keefe
District Counsel
Midwestern District